



**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:

WALTER HENRY, JR.,
Complainant,

and

**TCF NATIONAL BANK OF
ILLINOIS, a/k/a TCF BANK,**
Respondent.

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CHARGE NO: **1999CP0242**
EEOC NO: **N/A**
ALS NO: **10992**

RECOMMENDED ORDER AND DECISION

This matter comes before me on the Complaint of Walter Henry, Jr. against TCF National Bank of Illinois, a/k/a TCF Bank, which was filed with the Illinois Human Rights Commission (Commission) on July 30, 1998. The Complaint alleges that Respondent was discriminated against in violation of The Illinois Human Rights Act, 775 ILCS 5-102(A), in that Respondent denied him full and equal enjoyment of its facility by refusing to cash his payroll check because of his race; black.

A public hearing was held on February 10, 2003. At the close of Complainant's case in chief on liability, Respondent moved for a directed finding arguing that the Complainant failed to establish a *prima facie* case of race discrimination. The Complainant was given an opportunity to orally respond to Respondent's motion. I then granted Respondent's motion and closed the public hearing, giving the parties an opportunity to submit closing briefs by April 10, 2003. Respondent submitted a Post-Hearing Brief, while Complainant failed to file one. This matter is now ready for decision.

Contentions of the Parties

Complainant filed this Complaint alleging he was discriminated because of his race; black. Complainant's Complaint contends that he had been denied the opportunity to cash his payroll check at Respondent's Bank because he is black. At the close of Complainant's case in chief, Respondent moved for a directed verdict, which was granted.

Findings of Fact

1. On July 30, 1998, Complainant filed a Charge of Discrimination against Respondent with the Illinois Department of Human Rights (Department).
2. On August 27, 1999, the Department filed a Complaint on behalf of the Complainant with the Illinois Human Rights Commission (Commission) alleging that Respondent had discriminated against him on the basis of his race in violation of 775 ILCS 5-102(A) of the Act when it refused to cash his payroll check because of his race; black.
3. Complainant's race is black.
4. On February 5, 1998, between the hours of 6:00 p.m. and 8:00 p.m., Complainant arrived at one of Respondent's bank branches at 12700 South Western, Blue Island, Illinois, located in a Jewel Food Store, to cash his payroll check. Complainant approached Valerie Ackerman, a teller for Respondent's bank, in order to cash his check.
5. Prior to and subsequent to February 5, 1998, Complainant has cashed his payroll check without incident.

6. On February 5, 1998, as well as the other various times that
Complainant
Cashed his checks at Respondent's bank, Complainant observed other black
customers
customers having their checks cashed without incident.
7. On February 5, 1998, Valerie Ackerman refused to cash
Complainant's
check because he was being rude to her, in that he asked her whether she was
going to be long speaking with another teller because he was pressed for time.
8. Complainant did not introduce any evidence of race discrimination
in Respondent's refusal to cash his check.

Conclusions of Law

1. Complainant is an "aggrieved party" as defined by section 5/1-103(B) of the Act.
2. Respondent, TCF National Bank of Illinois, a/k/a TCF Bank, is a
"public place of accommodation" within the meaning of Section 5-101(A)(1) and
is subject to the provisions of the Act.
3. The Human Rights Commission has jurisdiction over the parties hereto
and subject matter herein.
4. The Complainant has the burden of proving a *prima facie* case of
discrimination by a preponderance of the evidence. Section 5/8A-102(I)(3) of the Act;
see also, Anderson v. Human Rights Comm'n, 314 Ill. App. 3d 35; and Koulegeorge v.

Human Rights Comm'n, Ill. Dept of Human Rights and Tempel Steel Co., 316 Ill. App. 3d 1079, (1st Dist. 2000).

5. The Complainant failed to establish a *prima facie* case of race discrimination.

6. Entry of a directed finding in favor of Respondent was appropriate and should be sustained.

Discussion

The Human Rights Commission has the authority to consider motions for directed finding. Koulegeorge v. Human Rights Comm'n, Ill. Dept of Human Rights and Tempel Steel Co., 316 Ill. App. 3d 1079, 250 Ill.Dec. 208 (1st Dist. 2000); Yates and Salvation Army Adult Rehabilitation Center and Lila Delong, ___ Ill.HRC Rep. ___ (1988SP0182-3, August 27, 1993); Anderson v. Human Rights Comm'n, 314 Ill.App.3d 35. The Commission has held that motions for directed finding are appropriately considered at the conclusion of Complainant's case in chief. Mott and City of Elgin, ___ Ill.HRC Rep. ___ (1986CF3090, June 30, 1992); Burch and Caterpillar Tractor Co., 3 Ill. HRC Rep. 106 (1982); Cockrell and CNA Insurance Co., 1 Ill. HRC Rep. 171 (1981).

At the close of Complainant's case in chief, Respondent moved for a directed finding arguing that Complainant was unable to establish a prima facie case of race discrimination. In deciding whether the Complainant has made a showing of proof sufficient to survive a motion for directed finding, a two-step analysis must be applied. Happel v. Mecklenburger, 101 Ill. App. 3d 107, 427 N.E.2d 974 (1st Dist. 1981). This analysis requires the trier of fact to determine

first, as a matter of law, whether the claimant has presented some evidence, more than a scintilla, on every essential element of his cause of action. If not, the movant is entitled to a directed finding. If some evidence has been presented, then all of the evidence must be weighed, including the evidence favorable to the Respondent. The trier of fact must weigh credibility, draw reasonable inferences and consider the weight and quality of the evidence. If this weighing process results in the negation of some of the evidence necessary to the Complainant's prima facie case, the Respondent is entitled to a judgment in its favor. Kokinis v. Kotrich, 81 Ill.2d 151, 407 N.E. 2d 43, (1980). It is well established that the initial burden of establishing a prima facie case of discrimination rests with the Complainant. McDonnell-Douglas v. Green 411 U.S. 792 (1973); Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248 (1981).

During the hearing, the Complainant testified that when he arrived at Respondent's bank, he got into one of the shorter of two lines that led to two separate tellers. Complainant was informed that the line he was in was for new accounts only and that the other line was for check cashing. Complainant moved into the next line and waited approximately 20 minutes before he approached a bank teller by the name of Valerie Ackerman. Ms. Ackerman apologized to Complainant for the wait and began processing his check. During that time, Ms. Ackerman began speaking with another teller. Complainant interrupted the conversation and asked Ms. Ackerman whether her conversation was going to be long because he was pressed for time. Complainant testified that Ms.

Ackerman then told him, "I don't have to take this, people have been giving me a hard time all day." Ms. Ackerman returned Complainant's check and Identification and told him that she would not be cashing his check.

Generally, there are two ways in which a complainant may establish a *prima facie* case of discrimination under the Human Rights Act. In the case of Belha v. Modform, Inc., Ill. HRC Rep. (1987CF2953, January 31, 1995), the Commission observed that a *prima facie* case of discrimination could be established through either direct or indirect evidence of discrimination. For example, where there is no direct expression of discriminatory animosity or racial remarks, a complainant can still make out a *prima facie* case of discrimination through indirect proof. As is the case before me, the record is void of any discriminatory animosity or racial remarks towards the Complainant. He must therefore attempt to prove through indirect evidence that he was discriminated against due to his race.

To establish a *prima facie* case of discrimination on indirect evidence, Complainant must establish three elements. He must prove that 1) he is in a protected class, 2) he was denied full enjoyment of Respondent's facilities and services, and 3) others not within his protected class were given full enjoyment of those facilities. Davis and Ben Schwartz Food Mart, 23 Ill. HRC Rep. 2 (1986).

It is evident that Complainant has failed to put forth any evidence whatsoever of race discrimination on the part of Respondent. On the contrary, the evidence in the record, which consists of the testimony of Complainant, clearly shows that the reason Respondent refused to cash his check on the date in question was because of his rude behavior towards one of its tellers. The Complainant did not introduce any type of

evidence which referred to his race nor did he even allege in his testimony that the reason for Respondent's refusal was due to his race. In addition, Complainant has failed to show that others not within his protected class were given full enjoyment of those facilities, while his protected class was denied such services. Complainant's own testimony showed that he never witnessed any other black customers being refused service. The facts also show that prior to and subsequent to the incident in question, Respondent never denied service to the Complainant.

By failing to offer even a scintilla of evidence that race was involved in Respondent's refusal to cash his payroll check, Complainant has failed to establish a *prima facie* case of race discrimination. Upon consideration of all of the testimony and evidence, I find that the Complainant has failed to prove that he was denied service in a public place of accommodation, and as such has failed to prove that the Respondent discriminated against him due to his race.

Recommendation

As Complainant has failed to make out a *prima facie* case of race discrimination in his case in chief, it was appropriate to grant Respondent's motion for a directed finding. I, therefore, recommend that the directed finding in favor of Respondent be sustained and the instant matter be dismissed with prejudice.

HUMAN RIGHTS COMMISSION

BY: _____

ENTERED: April 28, 2003

NELSON EDWARD PEREZ
Administrative Law Judge
Administrative Law Section